

REMARKS

The above-referenced application has been reviewed in light of the Appeal Decision mailed June 26, 2008. By the present amendment, the applicant has amended claim 2 and added claim 14. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the prior art. Prompt and favorable consideration of these claims is earnestly sought.

In the Appeal Decision, the Board of Patent Appeals and Interferences affirmed the rejections of the pending claims made in the Office Action dated August 3, 2005. In the Office Action, claims 2, 5, 7-9, and 13 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,655,746 to Daniels et al. (Daniels) in view of U.S. Patent No. 5,180,478 to Kontos et al. (Kontos). According to the Office Action, Daniels discloses a first tubular member 68 having an open proximal end, a first inflatable member 72, a second tubular member 16 having open proximal and distal ends defining a bore 18 therethrough and a second inflatable member 30. The Office Action acknowledged that Daniels fails to disclose the first inflatable member 72 and the first tubular member 68 having an open distal end. The Office Action further averred that Kontos discloses that the tubular member of the inner, pilot balloon can have an open distal end so that it can slidably receive the guide wire and that it would have been obvious to make the distal end of the first inflatable member 72 and the first tubular member 68 of Daniels open as disclosed in Kontos.

As presently amended, claim 2 recites an apparatus including, *inter alia*, a first tubular member, a first inflatable member, a second tubular member configured and dimensioned for

receiving the first tubular member, and "a second inflatable member attached to and extending distally from the distal end of the second tubular member."

Daniels relates to a catheter device for delivering fluids to a target region in a vessel of a patient by isolating the target region using two inflatable balloons. Specifically, Daniels discloses a balloon 30 "carried on the distal end of the tube [16]" and an inflatable balloon 72 "formed integrally with the walls of the tube [68]." (See Column 3, lines 46-47 and Column 4, lines 41-42). Balloon 30 "is formed by sealing the opposite end regions of a flexible sleeve 32 to distal ring portions of the tube [16] on either side of opening 28." As clearly seen in Figure 4 (reproduced hereinbelow), a distal portion of balloon 30 is sealed around the distal end region 16b of tube 16. No portion of balloon 30 extends distally from distal end region 16b of tube 16.

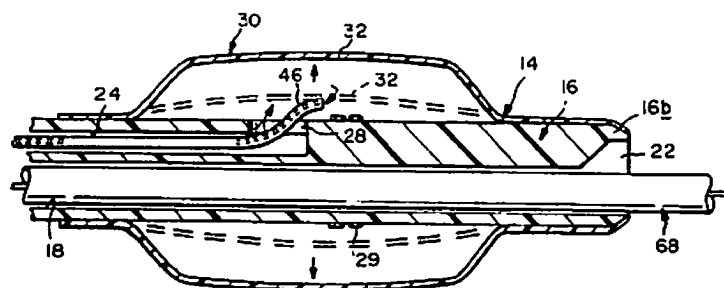


FIG. 4.

In the Office Action, balloon 30 is equated to the recited second inflatable member and tube 16 is equated to the recited second tubular member. Given that the balloon 30 does not extend distally from the distal end of tube 16, Daniels fails to disclose or suggest an apparatus including, *inter alia*, a first tubular member, a first inflatable member, a second tubular member

configured and dimensioned for receiving the first tubular member, and "a second inflatable member attached to and extending distally from the distal end of the second tubular member," as recited in claim 2. Modifying balloon 72 of Daniels to include an open distal end, as taught by Kontos according to the Office Action, does not cure the deficiencies of Daniels. Daniels, either alone or in combination with Kontos, fails to disclose or suggest the apparatus recited in claim 2. For at least the foregoing reasons, the applicant respectfully submits that claim 2 is not suggested by Daniels in view of Kontos and that claim 2 is allowable.

Since claims 2, 5, 7-9, and 13 depend from claim 2, the applicant further submits that claims 2, 5, 7-9, and 13 are also allowable over Daniels in view of Kontos.

Claims 3 and 4 were rejected in the Office Action under 35 U.S.C. § 103 (a) as being unpatentable over Daniels in view of Kontos and U.S. Patent No. 4,981,478 to Evard et al. (Evard). The Office Action stated that Daniels fails to disclose an inner member defining an annular space with the first tubular member, but that Evard discloses that a balloon catheter can be constructed with an inner tubular member 13 and an outer tubular member 11 with an annular space therebetween and that it would have been obvious to construct the first tubular member of the Daniels so that it would also include these features.

As discussed hereinabove, the device recited in amended claim 2 is not suggested by Daniels in view of Kontos. Adding the annular space between inner and outer tubular members as disclosed in Evard, as suggested by the Office Action, does not cure the deficiencies of Daniels in view of Kontos. Hence, Daniels, either along or in combination with Kontos and Evard, does not disclose or suggest an apparatus including, *inter alia*, a first tubular member, a

first inflatable member, a second tubular member configured and dimensioned for receiving the first tubular member, and “a second inflatable member attached to and extending distally from the distal end of the second tubular member,” as recited in amended claim 2. Therefore, it is respectfully submitted that claims 3 and 4 are not suggested by the Daniels in view of Kontos and Evard, and the rejection of the Office Action has been overcome.

Claims 11 and 12 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over the Daniels in view of Kontos and U.S. Patent No. 4,690,140 to Mecca (Mecca). According to the Office Action, the distal end of the first tubular member 68 of Daniels, as modified hereinabove to include the asserted features of Kontos, would inherently be capable of receiving an endoscope or a laparoscopic instrument.

As discussed hereinabove, the device recited in amended claim 2 is not suggested by Daniels in view of Kontos. Adding the surgical instrument as disclosed in Mecca, as suggested by the Office Action, does not overcome the deficiencies of Daniels in view of Kontos and does not result in an apparatus including, *inter alia*, a first tubular member, a first inflatable member, a second tubular member configured and dimensioned for receiving the first tubular member, and “a second inflatable member attached to and extending distally from the distal end of the second tubular member,” as recited in amended claim 2. Therefore, it is respectfully submitted that claims 11 and 12 are not suggested by the Daniels in view of Kontos and Mecca, and the rejection of the Office Action has been overcome.

New claim 14 has been added herein. As discussed above, claim 2 is not suggested by Daniels in view of Kontos. Since claim 14 depends from claim 14, it is respectfully submitted

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that claim 14 is also allowable over Daniels in view of Kontos.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 2-5, 7-9, and 11-14, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,



Dana A. Brussel
Reg. No. 45,717
Attorney for Applicant

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526

Send correspondence to:
Chief Patent Counsel
Covidien
60 Middletown Road
North Haven, Connecticut 06473